

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:05-CR-00004-F-1

UNITED STATES OF AMERICA,)	
)	
v.)	<u>ORDER</u>
)	
DANIEL WATLINGTON,)	
Defendant.)	

This matter is before the court on Daniel Watlington's Motion for Relief pursuant to Rule 60(b) [DE-602]. Watlington argues that the court erred in failing to order an amendment to the Presentence Report, and the result was that his sentence violates both the Constitution and statutes.

In *United States v. Winestock*, 340 F.3d 200 (4th Cir. 2003), the Fourth Circuit held as follows:

[A] motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application, while a motion seeking a remedy for some defect in the collateral review process will generally be deemed a proper motion to reconsider. Thus, a brand-new, free-standing allegation of constitutional error in the underlying criminal judgment will virtually always implicate the rules governing successive applications. Similarly, new legal arguments or proffers of additional evidence will usually signify that the prisoner is not seeking relief available under Rule 60(b) but is instead continuing his collateral attack on his conviction or sentence.

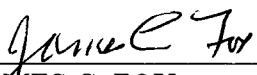
Id. at 207 (internal citations omitted). The court finds that the instant Motion for Relief pursuant to Rule 60(b) is a "second or successive" motion under § 2255. The court further finds that Watlington has not shown that he has obtained permission from the Fourth Circuit Court of Appeals to file the instant motion. *See* 28 U.S.C. § 2255(h) ("A second or successive motion

must be certified as provided in section 2244 by a panel of the appropriate court of appeals.”).

In light of the foregoing, Watlington’s Motion for Relief pursuant to Rule 60(b) [DE-602] is DISMISSED. The court finds that Watlington has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This, the 20th day of April, 2014.



JAMES C. FOX
Senior United States District Judge